

MODEL OPINION SUBCOMMITTEE WORK PLAN

March 9, 2006

General

On direction from the Steering Committee of the State Bar Business Law Section Opinions Committee, a subcommittee (the "Model Opinion Subcommittee") has been created to consider whether it is advisable to create a model California transactional third party legal opinion and, if so, to prepare that model. This project is envisioned as a logical next step building upon the Business Law Section's recent opinions publications, including the recent report of the Section on Third Party Remedies Opinions, the report of the Section's Corporations Committee on Legal Opinions – Business Transactions, and the Report of the Section's UCC Committee on Legal Opinions – Personal Property Secured Transactions. The Subcommittee's goal is to produce a draft consistent with these reports and with recent guidance on third party opinions from Tri-Bar and the ABA. The Subcommittee also would be mindful of the Boston Bar Association's recent "Streamlined Form of Closing Opinion."

Organizational Meeting

The Model Opinion Subcommittee held an organizational meeting by conference telephone call on February 16, 2006. At that meeting the Subcommittee reviewed this work plan. Most importantly, the Subcommittee decided that preparation of an annotated model opinion which drew upon and was consistent with the Section's recent opinions reports (and national literature) would be a valuable addition to our opinions publications. The Subcommittee established a Drafting Committee to commence preparation of a draft opinion. Members of the Drafting Committee are noted with an "*" on the list in the next section of this plan.

Membership and Outreach

The Model Opinion Subcommittee will be a joint venture between the State Bar Business Law Section Opinions Committee and those other Section Standing Committees (including Corporations, and perhaps UCC and Partnerships/LLCs or others) having an interest in the subject.

Representatives of the Opinions Committee

(Members of the Drafting Committee denoted by "*")

1. Tim Hoxie, Chair*
2. Ken Carl
3. Peter Carson
4. Jim Fotenos*
5. Robert Gloistein
6. Jerry Grossman*
7. Morris Hirsch

8. David Jargiello*
9. Moshe Kupietzky
10. Dan Leventhal*
11. Carol Lucas
12. Peter Munoz
13. Susan Cooper Philpot*
14. John Power
15. Steve Sherman*
16. Peter Szurley*
17. Ann Walker
18. Steve Weise

Representatives of other Standing Committees

The Subcommittee will contact, following approval of the project by the Opinions Committee Steering Committee and informing the Section's Executive Committee, the Section's Corporations and Partnerships/LLC Committees to invite them to participate in this project from the outset. The Subcommittee believes the model opinion should reflect principles set forth in prior reports published by each of these committees. The model opinion will also be intended to compliment the model opinion previously prepared for secured transactions by the UCC Committee and, while this Subcommittee does not at present envision significant overlap with the prior work of the UCC Committee, participation of that committee in the project would be welcome.

Other Contacts

The Model Opinion Subcommittee expects to contact members of various groups outside the state with an interest in this matter for input as its work progresses. Such groups will include:

- The Boston Bar Association Business Law Section's Legal Opinions Committee (to discuss their form); (Peter Carson was designated to liaise with the group at the Subcommittee's organizational meeting);
- The ABA Business Law Section's Committee on Legal Opinions (John Power, as Vice Chair of the ABA Committee, would act as liaison to the Committee); and
- The Tri-Bar Opinion Committee (Morris Hirsch, John Power and Steve Weise, as members of the Tri-Bar Opinion Committee, would act as liaisons to the Committee).

Appropriate representatives of these groups will be identified, and their role (formal status as ex-officio members, occasional informal consultation or something in between)

will be determined by the Model Opinion Subcommittee in consultation with the Steering Committee.

Way Forward

At its February 16, 2006 organizational meeting, the Subcommittee settled on the following plan of action:

- Present this work plan to the Opinions Committee Steering Committee for approval and then inform the Section's Executive Committee;
- Invite participation by other Section Standing Committees (especially Corporations and Partnerships/LLCs); identify specific individuals to work with the Subcommittee and Drafting Committee on the project;
- Form the Drafting Committee (the initial members for the Drafting Committee have been identified);
- Identify individuals to liaise with other interested groups (in process); and
- Commence preparation of a draft.

Work Product

The work product of the Model Opinion Subcommittee is envisioned to be a model annotated opinion that can be used by California lawyers as an acceptable form for rendering third-party closing opinions. Any such model would have to be consistent with the Section's recent opinion publications as well as, to the extent possible, national literature such as Tri-Bar and ABA publications. The Model Opinion Subcommittee expects not only to provide a useful California model, but a model that might contribute positively to the development of a national consensus about appropriate opinion forms and customary practice.

While the Model Opinion Subcommittee expects that the preparation of a model will be an interactive process involving significant consultation and attention to a number of issues, some parameters for the project were discussed at the organizational meeting. These include that any model will:

- Be consistent with current Section publications;
- Be sensitive to the need to promote an evolving natural uniformity in practice;

- Be prepared to assist practitioners, but will not be intended to be a benchmark for setting a particular standard of practice;
- Be based on a hypothetical unsecured loan transaction (in light of the fact that such transactions are among the most frequent in which opinions are rendered);
- Illustrate appropriate opinion forms for different types of entities, including corporations and LLCs;
- Illustrate appropriate ways to handle matters such as transaction parties formed or operating in other jurisdictions or contracts governed by the law of other jurisdictions; and
- Provide, when appropriate, suggested means of addressing some of the California-specific issues identified in the Report on Third-Party Remedies Opinions.